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Supreme Court, U.S.
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No. 95-2078

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER, 1995

SPRING MEADOWS APARTMENT COMPLEX, LIMITED PARTNERSHIP,

Petitioner,

vs.

DAVID L. STALLINGS and BARBARA J. STALLINGS,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ARIZONA

RESPONDENT'S BRIEF IN OPPOSITION

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QUESTION PRESENTED

Did the particular lift stay order of the bankruptcy court permit respondents to proceed with their complaint previously filed in state court, or did the lift stay order first require respondents to file a second, identical complaint in state court?

LIST OF INTERESTED PARTIES

Petitioner is Spring Meadows Apartment Complex Limited Partnership; petitioner's liability insurance carrier is The Aetna Casualty and Surety Company.

Respondents are David L. Stallings and Barbara J. Stallings, husband and wife.

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APPENDIX A -- The Stallings' Motion for Relief From Automatic Stay 1a

APPENDIX B -- The Stallings' Statement of Facts for Motion to Reconsider Grant of Defendant's Motion to Dismiss 4a

Respondents David L. Stallings and Barbara J. Stallings (collectively, the "Stallings") respectfully request that the Court deny the petition for a writ of certiorari filed by Spring Meadows Apartment Complex Limited Partnership ("Spring Meadows") seeking review of the opinion of the Supreme Court of Arizona.

OPINIONS BELOW

The opinions of the Court of Appeals of Arizona, Stallings v. Spring Meadows Apartment Complex Ltd. Partnership, 886 P.2d 1373 (Ariz. App. 1994), rev'd, 913 P.2d 496 (Ariz. 1996) ("Stallings I"), and of the Supreme Court of Arizona, Stallings v. Spring Meadows Apartment Complex Ltd. Partnership, 913 P.2d 496 (Ariz. 1996) ("Stallings II"), are contained in petitioner's appendix, as are the minute entry and judgment of the Maricopa County Superior Court.[1/]

STATEMENT OF JURISDICTION

This Court lacks jurisdiction under 28 U.S.C. § 1257(a) to review the judgment in question. There is no jurisdiction to consider the propriety of the relief granted by the bankruptcy court in the lift stay order, or the propriety of the relief granted in a subsequent clarification order, because neither order was appealed by petitioner. Moreover, this Court also lacks jurisdiction under 28 U.S.C. § 1257(a) to review a state court decision on whether a complaint must be filed twice in state court.

[1/]The materials in petitioner's appendix are cited as "Pet. App. __a"; references to page numbers in the petition itself are given as "Pet. __." References to materials in Respondents' appendix (all of which were before the Arizona Supreme Court) are given as "Resp. App. __a."

STATEMENT OF THE CASE

On May 13, 1989, respondent David Stallings suffered serious personal injuries when he fell on a stairway at the Spring Meadows Apartments, an apartment complex in Glendale, Arizona, owned by Spring Meadows. The Stallings timely filed a personal injury action against Spring Meadows in the Maricopa County Superior Court on January 14, 1991.[2/] Stallings II, 913 P.2d at 497; Pet. App. 3a.

Unknown to the Stallings or their trial counsel, Spring Meadows had filed a petition seeking relief under Chapter 11 of the federal bankruptcy code on January 4, 1991. Id.; Pet. App. 3a. The Stallings discovered that Spring Meadows had filed for bankruptcy when Spring Meadows was served on February 26, 1991. Thereafter, the Stallings filed a timely proof of claim with the bankruptcy court, and, on May 31, 1991, moved for relief from the automatic bankruptcy stay. Id.; Pet. App. 4a; Resp. App. 1a-3a.

The Stallings' motion for relief from the automatic stay stated that the Stallings had already filed suit in state court and requested an order permitting the Stallings to proceed with the suit already filed and collect any judgment against Spring Meadows' liability insurer. Id. at 499; Pet. App. 9a; Resp. App. 2a-3a. Spring Meadows never opposed the Stallings' motion for relief from the automatic stay. Id. at 497; Pet. App. 4a. The bankruptcy court granted the Stallings' motion for relief from the automatic stay on June 25, 1991. Id.; Pet. App. 4a. The bankruptcy court's order stated:

[2/]Arizona has a two-year limitations period for personal injury claims. See A.R.S. § 12-542.

> 1. The automatic stay in this matter is lifted for the Stallings so that the Stallings may proceed in their personal injury claims against the Debtor;
>
> 2. The stay is lifted only so that the Stallings may proceed to secure their judgment, and then collect any judgment they may secure based on their personal injury claims from the insurance carrier or carriers of the Debtor only;
>
> 3. To the extent any such judgment is not collectible from the liability insurance policy or policies, the Stallings shall remain subject to the automatic stay and the further order of this Court with respect to it and shall remain a creditor of the Debtor to the extent of the balance of any such judgment remaining.

Stallings I, 886 P.2d at 1375; Pet. App. 15a-16a (emphasis added). Spring Meadows, which had not opposed the Stallings' motion for relief from the automatic stay, never appealed this order. Instead, Spring Meadows requested and received extensions of time to answer the Stallings' state court complaint. The Stallings' Statement of Facts for Motion to Reconsider Grant of Defendant's Motion to Dismiss, ¶¶ 11-12 & Ex. D, E, F, & G; Resp. App. 7a, 16a-21a.

On August 16, 1991, after the two-year limitations period of A.R.S. § 12-542 and the 30-day extension of 11 U.S.C. § 108(c) had arguably passed, Spring Meadows filed a motion to dismiss the Stallings' state court complaint. Pet.

App. 36a. Spring Meadows contended that the Stallings' complaint was "void" because it was filed during the pendency of the automatic stay and the order of the bankruptcy court did not provide retroactive relief. Pet. App. 36a-43a. The Maricopa County Superior Court granted Spring Meadows' motion on November 22, 1991 and entered a final judgment dismissing the Stallings' complaint on December 24, 1991. Pet. App. 32a-35a.

The Stallings appealed to the Arizona Court of Appeals, which affirmed the decision of the superior court. Stallings I, 886 P.2d 1373 (Ariz. App. 1994), rev'd, 913 P.2d 496 (Ariz. 1996); Pet. App. 12a-27a. The Court of Appeals held that "the bankruptcy court's order neither used the word 'annul' nor granted retroactive relief. . . . The wording suggests that the stay was prospectively terminated, as of the date of the order, for the limited purpose of permitting the Stallings to institute a personal injury action against Spring Meadows." Id. at 1378; Pet. App. 23a. Judge Philip E. Toci dissented, stating:

> [T]he Stallings' claim against Spring Meadows had been extinguished on a technicality, one not necessary to protect Spring Meadows' bankruptcy estate. . . . The conclusion that the Stallings' complaint is void because the bankruptcy court did not specifically annul the stay or grant retroactive relief is hypertechnical and unnecessary to protect the debtor or its estate.

Id. at 1380-81; Pet. App. 28a, 31a. The dissent further stated that the opinion of the Arizona Court of Appeals "exalts form over substance and leads to injustice in this case." Id. at 1381; Pet. App. 31a.

Following the decision of the Court of Appeals of Arizona, the Stallings moved in the bankruptcy court for clarification of that court's order. On December 6, 1994, the bankruptcy court granted the Stallings' motion, stating that it had always intended to grant retroactive relief. Stallings II, 913 P.2d at 498; Pet. App. 88a-89a. Concerning the prior June 25, 1991 Order, the bankruptcy court ordered:

> The Order of this Court dated June 25, 1991 granted [the Stallings] an annulment of the automatic stay for the limited purpose of providing relief retroactive to and including January 14, 1991, thereby validating [the Stallings'] filing of the January 14, 1991 personal injury complaint against [Spring Meadows] in Maricopa County Superior Court . . . such that said filing was not a void act, as, given the relief granted herein, it was not filed in violation of the automatic stay, and thereby allowing [the Stallings] to proceed with their cause of action in the Superior Court without the necessity of filing a new lawsuit after stay relief was obtained.
>
> . . . Additionally, and in the alternative, upon [the Stallings'] alternative prayer for relief, this Court now orders that [the Stallings] be, and they hereby are, granted an annulment of the automatic stay for the limited purpose of providing relief retroactive to and including January 14, 1991, thereby validating [the Stallings'] filing of the January 14, 1991 personal injury complaint . . . such that said filing was not a

> void act, as, given the relief granted herein, it was not filed in violation of the automatic stay.

Order Granting Movants' Motion for Clarification, or, in the Alternative, for Annulment of the Automatic Stay (the "Clarification Order"), Pet. App. 88a-89a (emphasis added); see also Stallings II, 913 Ariz. at 498; Pet. App. 6a. Spring Meadows initially sought to appeal the Clarification Order to the Ninth Circuit Bankruptcy Appellate Panel, but ultimately withdrew its appeal as untimely. 913 Ariz. at 498; Pet. App. 7a.

Meanwhile, the Stallings had appealed the decision of the Arizona Court of Appeals. The Supreme Court of Arizona vacated the decision of the Court of Appeals, reversed the decision of the trial court, and remanded the case for further proceedings, holding:

> [W]e hold that the bankruptcy court granted plaintiffs retroactive relief. . . . In this case, although the bankruptcy court did not employ any of the words on the § 362(d) list, the court did lift the stay so that plaintiffs could "proceed" with their action in state court, which corresponds to the language of one of the examples in the legislative history. More importantly, when plaintiffs moved for relief from the automatic stay, the bankruptcy court knew that their complaint had been filed in state court and served on Spring Meadows. In this situation, had the bankruptcy court meant to require the filing of an identical complaint, it surely would have said so. The common meaning of "proceed" is "to go

> forward or onward, especially after an interruption; continue." The American Heritage Dictionary of the English Language 1444 (3d ed. 1992). In interpreting the lift stay order, we assume that the court intended that the words it used would be understood by their common meanings.

Stallings II, 913 P.2d at 499; Pet. App. 9a (emphasis added). The Arizona Supreme Court concluded "We hold that the original lift stay order granted plaintiffs retroactive relief from the automatic stay . . . . Indeed, the bankruptcy court's clarification order, of which we have taken judicial notice, explicitly granted retroactive relief. This court and the bankruptcy court therefore appear to be in harmony on this issue." Id. at 499-500; Pet. App. 10a.

This petition for writ of certiorari followed.

REASONS FOR DENYING THE WRIT

I.

SPRING MEADOWS'S PETITION FAILS TO RAISE ANY IMPORTANT UNSETTLED QUESTION OF FEDERAL LAW MERITING SUPREME COURT REVIEW.

Spring Meadows' petition raises no federal question meriting Supreme Court review. The primary issue[3/] before the Supreme Court of Arizona involved interpreting the meaning and effect in state court of the bankruptcy court order of June 25, 1991, which stated that "the Stallings may proceed in their personal injury claims" against Spring Meadows and collect any judgment from Spring Meadows's insurance carrier. Pet. App. 4a (emphasis added). If the order was retroactive, there was no need to refile a second identical complaint in state court; if there was no retroactivity, then arguably the Stallings might need to refile a second identical complaint. The Stallings contended that the bankruptcy court order was intended to have retroactive effect, while Spring Meadows contended that no such retroactive effect was intended. The bankruptcy court ultimately clarified its June 25, 1991 order, stating in the Clarification Order that a retroactive effect was intended, and, in the alternative, issuing a second order with retroactive effect. Pet. App. 88a-89a. Thereafter, the Supreme Court of Arizona held that the bankruptcy court order did in fact have retroactive effect.

[3/]The Arizona Supreme Court requested and received briefing on the issue of whether the statute of limitations was equitably tolled under Arizona law.

Despite Spring Meadows' claims otherwise, there is no federal question involved when a state court decides whether a complaint must be filed twice in state court:

> Whether [a state] would treat a case filed in violation of the automatic stay as a non-event for limitations purposes is a question of state law. No federal interest is in play; the bankruptcy court authorized the continued prosecution of [this case] . . . . Federal law assured the plaintiffs 30 days in which to pick up the baton; if states want to give plaintiffs additional time, that is their business.

Pettibone Corp. v. Easley, 935 F.2d 120, 121 (7th Cir. 1991)(bracketed matter added); see also id. at 123 ("Once the [bankruptcy] judge authorized the prosecution of the personal injury action, however, all that remained was a debate about the consequences of filing the tort action while the stay was outstanding.") Nor is the preclusive effect of the bankruptcy court's order a federal question. "[T]he state judge will decide what effect to give the federal judgment; if [a state] is content to allow perpetual litigation, that is within the state's province . . . ." Pozsgay v. Southwestern Illinois Health Facilities, 924 F.2d 677, 678 (7th Cir. 1991)(bracketed matter added); see also Pettibone Corp., 935 F.2d at 123 ("Disputes about the effect of a decision in one case on the prosecution of another are for the judge presiding in the second case. In the law of preclusion the second court normally determines the effects of the first court's order"); 18 Charles Alan Wright & Arthur R. Miller, Federal Practice & Procedure, § 4405 at 13-14 (1981) ("The first court should not lightly usurp the jurisdiction of another court to dispose of pending litigation"); id. § 4413 at 106 (the general rule is that "a court cannot dictate preclusion

consequences at the time of deciding a first action").

Moreover, the Arizona Supreme Court's interpretation of the June 25, 1991 Order is clearly correct. When interpreting a federal court order or judgment, the "appropriate starting place in construing its meaning are the words of the judgment itself." United States v. Motor Vehicle Mfrs. Ass'n, 643 F.2d 644, 648 (9th Cir. 1981); see also Richman Bros. Records, Inc. v. U.S. Sprint Communications Co., 953 F.2d 1431, 1438 (3d Cir. 1991), cert. denied, 505 U.S. 1230 (1992) ("Ordinarily we construe district court orders 'by examination of the four corners of the document'"); Spearman v. J & S Farms, Inc., 755 F. Supp. 137, 140 (D.S.C. 1990) ("A judgment which is clear and unambiguous must be given its plain meaning and consequent legal effect. It may not be collaterally attacked under the guise of 'construction.'"). In this case, the meaning of the bankruptcy court's order granting the Stallings' relief from the automatic stay is self-evident. The order stated that the Stallings were granted leave "to proceed in their personal injury claims against the Debtor . . . so that [the Stallings] may proceed to secure their judgment against the Debtor . . . ." Pet. App. 16a. Although the order uses the word "lift" instead of "annul," the dictionary definition of "lift" (which is synonymous with "rescind," "revoke," "to take back or remove") reveals the terms to be substantive equivalents. See The American Heritage Dictionary of the English Language, 755 (1981).[4/]

[4/] Courts of Appeal have frequently used the phrase "lifting the stay" to indicate retroactive effect. See, e.g., Picco v. Global Marine Drilling Company, 900 F.2d 846, 850 (5th Cir. 1990) ("even if the district court's decision did violate the automatic stay when it was entered, the bankruptcy court's order lifting the stay cured any defect") (emphasis added).

Even assuming arguendo that the bankruptcy court's order was somehow ambiguous regarding "retroactive" or "prospective" relief, everyday rules of construction required the conclusion that the bankruptcy court's order granted the Stallings retroactive relief. If a court's order is ambiguous, the motion and any related papers underlying the order must be consulted to resolve the ambiguity. As the Court of Appeals for the Tenth Circuit has observed:

> If there is any ambiguity or obscurity or if the judgment fails to express the rulings in the case with clarity or accuracy, reference may be had to the findings and the entire record for the purpose of determining what was decided.

Security Mutual Casualty Co. v. Sentry Casualty Co., 621 F.2d 1062, 1066 (10th Cir. 1980) (emphasis added); see also Richman Brothers, 953 F.2d at 1439; Ford Motor Co. v. Summit Motor Products, Inc., 930 F.2d 277, 286 (3d Cir. 1991), cert. denied, 502 U.S. 939 (1991); Spearman, 755 F. Supp. at 140.

Because Spring Meadows never opposed the Stallings' motion for relief from the bankruptcy stay, the record predicating the bankruptcy court's order consisted only of the Stallings' motion for relief from the automatic stay. Resp. App. 1a-3a. That record demonstrated without contradiction that the Stallings sought both retroactive and prospective relief from the stay in order to prosecute their pending complaint against respondent and its liability insurance carrier in state court. Specifically, the Stallings' motion for relief unequivocally stated that the Stallings had already "filed suit against [Spring Meadows] for personal injuries." Resp. App. 2a. The Stallings' motion also stated

that "[t]he court should order the automatic stay lifted to permit [the Stallings] to prosecute their claims" against Spring Meadows. Resp. App. 3a. Thus, the Stallings' motion made it plain that the Stallings sought relief to "prosecute" their pending complaint, rather than seeking leave to "initiate" a new complaint.

Construing a similar bankruptcy order, the Court of Appeals for the Fifth Circuit held:

> The order authorized the identified claims to "go forward," "commence," and "proceed." . . . When the [claimants] filed their complaint they were unaware of the bankruptcy petitions. Upon learning of the automatic stay they moved the court for relief from the stay. The bankruptcy court granted that relief. We find the court's intent clear -- it was permitting these claims to proceed to judgment. We decline to accept [the debtor's] argument that the order merely allowed the [claimants] permission to refile their complaint. We perceive no valid purpose to be served by requiring that the [claimants] file more papers with an already burdened court.

Sikes v. Global Marine, Inc., 881 F.2d 176, 179-80 (1989). As the Fifth Circuit concluded in Sikes, the filing of a new complaint here would have resulted in unnecessary expenditures of time and money. There was simply no reason for the Stallings to initiate a new proceeding when they already had drafted, filed and served their pending state court complaint at considerable expense.

II.

THE "VOID" OR "VOIDABLE" QUESTION IS IRRELEVANT TO THIS CASE.

Rather than presenting any facts or argument that would rebut the interpretation of the bankruptcy court order by the Arizona Supreme Court or the bankruptcy court itself, Spring Meadows devotes pages of its petition for a writ of certiorari to an abstract issue that bears little or no relation to the issues in this case: whether a complaint filed during an automatic bankruptcy stay is "void" or "voidable."[5/] Pet. 11, 16-21. In fact, the Supreme Court of Arizona and the Ninth Circuit agree that a retroactive lifting of the bankruptcy stay renders the entire issue of "void" versus "voidable" irrelevant:

[5/]The Courts of Appeal for the First, Second, Third, Ninth, Tenth and Eleventh Circuits have at one time or another characterized acts in violation of the automatic bankruptcy stay as "void." See In re Smith Corset Shops, Inc., 696 F.2d 971, 976 (1st Cir. 1982); Rexnord Holdings, Inc. v. Bidermann, 21 F.3d 522, 527 (2d Cir. 1994); Maritime Elec. Co. v. United Jersey Bank, 959 F.2d 1194, 1206-07 (3d Cir. 1991); In re Schwartz, 954 F.2d 569, 572 (9th Cir. 1992); Ellis v. Consolidated Diesel Elec. Corp., 894 F.2d 371, 372 (10th Cir. 1990); Borg-Warner Acceptance Corp. v. Hall, 685 F.2d 1306, 1308 (11th Cir. 1982). Other decisions, including some from the same Courts of Appeal, have characterized acts in violation of the stay as "voidable" or "invalid." See Constitution Bank v. Tubbs, 68 F.3d 685, 692 n.6 (3d Cir. 1995) ("voidable, rather than void ab initio"); In re Siciliano, 13 F.3d 748, 751 (3d Cir. 1994) (retroactive relief can "validate proceedings that would otherwise be void ab initio"); Sikes v. Global Marine, Inc., 881 F.2d 176, 178-80 (5th Cir. 1989) (voidable); Easley v. Pettibone Michigan Corp., 990 F.2d 905, 909-12 (6th Cir. 1993) ("invalid and voidable"); Bronson v. United States, 46 F.3d 1573, 1578 (Fed. Cir. 1995) (inaccurate to refer to acts in violation of the stay as "void").

> The threshold issue, however, is not whether plaintiffs' original complaint was void or voidable but whether the bankruptcy court granted retroactive relief such that plaintiffs' complaint was filed within the statutory period. The [Court of Appeals for the] Ninth Circuit has stated: "If a creditor obtains retroactive relief . . . there is no violation of the automatic stay, and whether violations of the stay are void or voidable is not at issue."

Stallings II, 913 P.2d at 499; Pet. App. 8a (citing In re Schwartz, 954 F.2d 569, 573 (9th Cir.1992)) (emphasis added). Moreover, despite their positions on the "void" or "voidable" debate, the various Circuit Courts of Appeal agree that bankruptcy courts have the power to grant retroactive relief validating otherwise "void" or "voidable" acts.[6/]

[6/]See Constitution Bank v. Tubbs, 68 F.3d 685, 692 & n.6 (3d Cir. 1995) (judicial proceedings against debtor are void ab initio absent relief from the automatic stay; retroactive relief from the stay "mak[es] acts in violation of the stay voidable, rather than void ab initio"); In re Siciliano, 13 F.3d 748, 751 (3d Cir. 1994) (same); In re Jones, 63 F.3d 411, 412-13 (5th Cir. 1995), cert. denied, 116 S. Ct. 1566 (1996) (actions in violation of the stay are voidable and retroactive relief was permitted because claimant received neither actual nor constructive notice of stay); Sikes v. Global Marine, Inc., 881 F.2d 176, 178-80 (5th Cir. 1989) (holds judicial acts in violation of stay are voidable; order authorizing plaintiffs to "proceed" with claims provided retroactive relief validating the previously filed complaints); Easley v. Pettibone Michigan Corp., 990 F.2d 905, 909-12 (6th Cir. 1993) (actions taken in violation of stay are "invalid and voidable" because retroactive relief can be granted under § 362(d) validating the otherwise void acts); Matthews v. Rosene, 739 F.2d 249, 251 (7th Cir. 1984) (violations of stay "ordinarily are void" but equitable considerations permit relief); Davies v. C.I.R., 68 F.3d 1129, 1130 (9th Cir. 1995) ("A bankruptcy court may retroactively ratify

In practice, the "void" or "voidable" issue only matters when no retroactive relief was granted. For example, in Easley v. Pettibone Michigan Corp., 990 F.2d 905 (6th Cir. 1993), plaintiffs had unwittingly filed their personal injury complaint in violation of the automatic bankruptcy stay. Id. at 907. Plaintiffs moved the bankruptcy court for an order granting them retroactive relief, which the bankruptcy court denied. Id. The bankruptcy court dissolved the stay on December 28, 1988, plaintiffs failed to file a new complaint within the 30-day grace period provided by 11 U.S.C. § 108(c), and defendant subsequently moved to dismiss the complaint as void. Id. The Court of Appeals for the Sixth Circuit held that "actions taken in violation of the stay are invalid and voidable and shall be voided absent limited equitable circumstances." Id. at 911. However, those equitable circumstances did not exist in Easley and retroactive relief had been denied under § 362, meaning that the Easley complaint had been voided:

> Although plaintiffs will be prejudiced because they have lost their products liability claim against defendant, this is because they failed to refile their action within the thirty-day grace period afforded by 11 U.S.C. § 108(c). This section of the Bankruptcy Code provides

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an action that would have been voided by the stay"); In re Schwartz, 954 F.2d 569, 573 (9th Cir. 1992) ("absent affirmative relief from the bankruptcy court, violations of the stay are void"); In re Calder, 907 F.2d 953, 956-57 (10th Cir. 1990) (actions taken in violation of the stay are void; however, equity allowed validation of state court judgment); In re Albany Partners Ltd, 749 F.2d 670, 675 (11th Cir. 1984) (actions in violation of the stay are void; however, retroactive relief permitted); Bronson v. United States, 46 F.3d 1573, 1577-78 (Fed. Cir. 1995) (some actions in violation of stay are voidable because of possibility of retroactive relief).

> that a claimant may file any suit, commencement of which was stayed 30 days after notice of the termination of the stay. Accordingly, the July 1988 complaint filed by plaintiffs against defendant is voided.

Id. at 912 (footnotes omitted). Spring Meadows argues that Easley controls here and that the Stallings' complaint is void or voided for failure to refile under § 108(c). Pet. 16, 27-29.

Actually, Easley requires the opposite result. The plaintiffs in Easley only needed to refile under § 108(c) within 30 days because retroactive relief had been denied. Id. at 907. In contrast, here the bankruptcy court granted retroactive relief on June 25, 1991, and then granted it a second time on December 6, 1994. The Arizona Supreme Court subsequently held that the bankruptcy court had in fact granted retroactive relief. There was no reason to refile under § 108, and no practical import to further debate on the abstract question of whether the Stallings' complaint would be void or voidable absent retroactive relief.

Spring Meadows' obsession with the "void" or "voidable" issue "has the air of the scholastic about it." Pettibone Corp., 935 F.2d at 123. Once the bankruptcy court clarified that it had intended to grant retroactive relief in its June 25, 1991 Order, and the Arizona Supreme Court held that the June 25, 1991 Order did in fact grant retroactive relief, the "void" or "voidable" debate had no further relevance to this case.

III.

THE APPROPRIATENESS OF RETROACTIVE RELIEF IS NOT PROPERLY BEFORE THIS COURT.

Besides raising irrelevant issues such as the "void" or "voidable" debate, petitioner goes to great length to raise arguments that are not properly before this Court. The bankruptcy court's decision to lift the stay and provide the Stallings with retroactive relief was clearly a final order. See Eddleman v. U.S. Department of Labor, 923 F.2d 782, 784 (10th Cir. 1991); In re Tucson Estates, Inc., 912 F.2d 1162, 1166 (9th Cir. 1990). Congress provided procedures whereby such final bankruptcy court orders could be appealed. See 28 U.S.C. § 158; F.D.I.C. v. Shearson-American Express, Inc., 996 F.2d 493, 498 (1st Cir. 1993), cert. denied, 114 S. Ct. 1054 (1994) ("Orders, judgments and decrees of the bankruptcy court from which an appeal is not timely taken are final . . . even if erroneous. . . . [O]rders of the bankruptcy court modifying the stay or finding no violation, even if erroneous, are entitled to respect and are not subject to collateral attack.").

Yet Spring Meadows never opposed the Stallings' motion for relief from the automatic bankruptcy stay and never appealed the bankruptcy court order of June 25, 1991. Thus, the question of whether that order was correct or appropriate is not before this Court. Nor are the issues of whether retroactive relief was appropriate, Pet. 16-21, 25-27, or whether "cause" existed under 11 U.S.C. § 362(d) for relief from the stay. Pet. 21-24. See United States v. Alvarez-Sanchez, 511 U.S. 350, 114 S. Ct. 1599, 1605 n.5 (1994) (absent exceptional circumstances, the Supreme Court does not address arguments which were waived when not

raised in the District Court or the Court of Appeals).[7/]

Rather than opposing the Stallings' motion in the bankruptcy court to lift the stay, and appealing an adverse order in the federal courts, Spring Meadows "collaterally attacked [the bankruptcy court order in the state courts] under the guise of 'construction.'" Spearman, 755 F. Supp. at 140. This entire litigation since August 1991 has amounted to little more than a desperate attempt by Spring Meadows' insurer to raise arguments in Arizona state courts that Spring Meadows failed to raise in bankruptcy court back in June of 1991 -- all to delay any relief to the Stallings, who filed their complaint more than five and a half years ago. These efforts should be rejected and Spring Meadows' petition denied.

IV.

ALTHOUGH THE ISSUE IS NOT PROPERLY BEFORE THIS COURT, RETROACTIVE LIFTING OF THE BANKRUPTCY STAY WAS PROPER.

As discussed above, Spring Meadows' arguments concerning the appropriateness and correctness of the bankruptcy court's decision to grant retroactive relief are not

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[7/]Moreover, Spring Meadows withdrew its untimely appeal of the bankruptcy court's Clarification Order of December 6, 1994. Thus, the issue of whether the Clarification Order was correct or appropriate is also not properly before this Court. Indeed, were this Court to reverse the Supreme Court of Arizona and hold that the bankruptcy court order of June 25, 1991 had no retroactive effect, this Court's opinion would be completely advisory -- because the bankruptcy court on December 6, 1994 issued a second order providing retroactive relief to the Stallings.

properly before this court. Moreover, the retroactive relief granted by the bankruptcy court in its orders of June 25, 1991 and December 6, 1994 was correct in any case.

First, "the bankruptcy court [has] wide latitude in crafting relief from the automatic stay." In re Schwartz, 954 F.2d at 572 (emphasis added); see also Claughton v. Mixson, 33 F.3d 4, 5 (4th Cir. 1994) ("broad discretion to lift the automatic stay"). Moreover, the decision to lift an automatic stay under § 362(d) is reviewed under an abuse of discretion standard. In re Kissinger, 72 F.3d 107, 108 (9th Cir. 1995); Matter of C & S Grain Co., 47 F.3d 233, 238 (7th Cir. 1995); Franklin Savings Ass'n v. Office of Thrift Supervision, 31 F.3d 1020, 1023 (10th Cir. 1994); Claughton, 33 F.3d at 5; In re Robbins, 964 F.2d 342, 345 (4th Cir. 1992); In re Jewett, 146 B.R. 250, 251 (9th Cir. B.A.P. 1992). This is because "the only issue properly and necessarily before a bankruptcy court during relief from stay proceedings is whether the movant creditor has a colorable claim; thus, a decision to lift the stay is . . . only a determination that the creditor's claim is sufficiently plausible to allow its prosecution elsewhere." Grella v. Salem Five Cent Sav. Bank, 42 F.3d 26, 34 (1st Cir. 1994).

Despite Spring Meadows' arguments to the contrary, 11 U.S.C. § 362(d) makes no distinction between the grounds required to obtain relief from the automatic stay, "such as by means of terminating, annulling, modifying or conditioning a stay . . . ." And because the Stallings were unaware of the bankruptcy stay when filing their complaint, this is a case particularly suitable for retroactive lifting of the bankruptcy stay. See In re Jones, 63 F.3d at 413 (retroactive relief was permitted when claimant had no notice of bankruptcy stay); Franklin Savings Ass'n, 31 F.3d at 1023 (retroactive reinstatement of claims permitted when

claimants are "honestly ignorant of the bankruptcy stay"); 2 Lawrence P. King, Collier on Bankruptcy, ¶ 362.07, at 362-64 (1996) (Section 362(d) "permits the [bankruptcy court's] order to operate retroactively, thus validating actions taken by a party at a time when he was unaware of the stay"). There was simply no reason for the bankruptcy court -- or the Arizona state courts -- to require that the Stallings file a second, identical complaint in state court in the summer of 1991. Stallings II, 913 P.2d at 499; Pet. 10a; Sikes, 881 F.2d at 180.

More fundamentally, permitting retroactive relief in this case had no effect on the underlying policy objectives of the automatic stay -- because the bankruptcy court's retroactive relief affected only Spring Meadows' liability insurance carrier, not Spring Meadows. See 2 Lawrence P. King, Collier On Bankruptcy, ¶ 362.07, at 362-75 ("Where the claim is one covered by insurance or indemnity, continuation of the action should be permitted since hardship to the debtor is likely to be outweighed by hardship to the plaintiff."). The purpose of the automatic stay is to provide the debtor with a "breathing spell from [its] creditors," In re Schwartz, 954 F.2d 569, 571 (9th Cir. 1992), not to unfairly benefit a debtor's liability insurance carrier.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

Mark I. Harrison
Counsel of Record
Rodney W. Ott
BRYAN CAVE LLP
2800 North Central Avenue, Suite 2100
Phoenix, Arizona 85004-1098
(602) 230-7000

John E. Osborne
GOLDBERG & OSBORNE
33 North Stone, Suite 1850
Tucson, Arizona 85701
(520) 620-3975

Attorneys for Respondents

APPENDIX

APPENDIX A – THE STALLINGS' MOTION FOR RELIEF FROM AUTOMATIC STAY

GOLDBERG & OSBORNE
1830 East Broadway, Suite 136
Tucson, Arizona 85719
(602) 323-8888

John E. Osborne, Esq.
State Bar #007085
Attorneys for Plaintiffs

IN THE UNITED STATES BANKRUPTCY COURT
IN AND FOR THE DISTRICT OF ARIZONA

DAVID L. STALLINGS and BARBARA J. STALLINGS, husband and wife,	) Chapter 11 Proceedings
Plaintiffs,	) No. 91-0025-TUC-LO
vs.	) MOTION FOR RELIEF FROM AUTOMATIC STAY
THE SPRING MEADOWS APARTMENT COMPLEX LIMITED PARTNERSHIP, an Arizona Limited Partnership;	
Defendants.	

Movants David L. Stallings and Barbara J. Stallings, husband and wife (the "Stallings"), by and through their counsel and pursuant to LRBP 4001, hereby move the Court to grant the Stallings relief from the automatic stay so that

the Stallings may proceed in their personal injury claims against the Debtor. The Stallings request that the stay be lifted only so that the Stallings may proceed to collect any judgment they may secure based on their personal injury claim from the insurance carrier or carriers for the Debtor.

This Motion is supported by the accompanying Memorandum and Points of Authorities.

DATED this 31st day of May, 1991.

GOLDBERG & OSBORNE

By /s/ John E. Osborne
John E. Osborne
Attorneys for the Creditors/Movants

MEMORANDUM OF POINTS AND AUTHORITIES

The Stallings filed suit against the Debtor for personal injuries sustained by the Stallings when Mr. Stalling fell due to an unreasonably dangerous condition at the Spring Meadows Apartments on May 13, 1989. The Stallings filed suit on February 12, 1991, and served the Debtor on February 26, 1991. Upon service of the Summons and Complaint, the Stallings were informed that The Spring Meadows Apartment Complex had filed Chapter 11 proceedings.

The Debtor carried a liability policy of insurance covering this loss with Aetna Insurance Company, under policy number 67AZ20085038FWI. This policy is not subject to any claims except by means of a liability claim such is this. It is available to indemnify the Debtor for the

Debtor's tort liability in circumstances such as this.

The Court should order the automatic stay lifted to permit the Stallings to prosecute their claims so long as the Stallings collect any judgment from the Debtor's liability insurance policy. To the extent any such judgment is not collectible from the liability insurance policy, the Stallings shall remain subject to the automatic stay and the further orders of this Court with respect to any stay.

This Court's Order lifting the stay as proposed should benefit the Debtor in that it will reduce the debts of the Debtor through a source unavailable generally to the remaining creditors of the Debtor.

WHEREFORE, for the foregoing reasons, the Stallings request that the Court grant the relief request herein.

DATED this 31st day of May, 1991.

GOLDBERG & OSBORNE

By /s/ John E. Osborne
John E. Osborne
Attorneys for the Movants

APPENDIX B -- THE STALLINGS' STATEMENT OF FACTS FOR MOTION TO RECONSIDER GRANT OF DEFENDANT'S MOTION TO DISMISS

GOLDBERG & OSBORNE
1830 East Broadway, Suite 136
Tucson, Arizona 85719
(602) 323-8888

John E. Osborne, Esq.
State Bar #007085
Attorneys for Plaintiffs

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA IN AND FOR THE COUNTY OF MARICOPA

DAVID L. STALLINGS and BARBARA J. STALLINGS, husband and wife,	CV-91-00953
Plaintiffs,	STATEMENT OF FACTS FOR MOTION TO RECONSIDER GRANT OF DEFENDANT'S MOTION TO DISMISS
vs.	
THE SPRING MEADOWS APARTMENT COMPLEX LIMITED PARTNERSHIP, an Arizona Limited Partnership; 1-10; JANE DOES 1-10; ABC PARTNERSHIPS 1-10; XYZ CORPORATIONS 1-10,	(Assigned to: The Hon. Alfred Rogers)
Defendants.	

Plaintiffs David and Barbara Stallings (the "Stallings"), by and through their counsel and pursuant to Rule IV, Uniform Rules of Practice, hereby submits the following Statement of Facts To Reconsider Grant of Defendant's Motion to Dismiss, and to supplement the previous statement of Facts contained in the Stallings Opposition to Motion to Dismiss.

I. Additional Material Facts.

1. The bankruptcy court entered an Order that was entirely authored by the Stallings' counsel based on an associated Motion authored by the Stallings' counsel. Affidavit of John E. Osborne II, paras. 2 & 3, copy attached as Exhibit A.

2. The Stallings' counsel prepared both the Motion and Order with the intent that the Order would permit the Stallings to proceed with this superior court litigation as if the stay had not been in effect. Affidavit of John E. Osborne II, para. 4, copy attached as Exhibit A.

3. The Stallings' Motion to Lift Stay fully apprised the bankruptcy court of the fact that the claims on which the Stallings' counsel wished to proceed were contained in the state court suit "filed on February 12, 1991, and served [on] the Debtor on February 26, 1991." Id., para. 5, Motion to Lift Stay, copy attached to the Stallings' Opposition to Motion to Dismiss as Exhibit C.

4. Further, the intent of the Motion as designed by the Stallings' counsel and as expressed in the Motion was to permit the Stallings to collect any judgment from "a liability policy of insurance covering this loss with Aetna Insurance Company, under policy number 67AZ20085038FWI." Affidavit of John E. Osborne II,

para. 6; Motion to Lift Stay at 2.

5. Justification and good cause existed to lift the stay in toto because "the stay as proposed should benefit the Debtor in that it will reduce the debts of the Debtor through a source unavailable generally to the remaining creditors of the Debtor." Id., at 3; Affidavit of John E. Osborne II, para. 7.

6. The Spring Meadows Apartments at the time was represented by the law firm of Fiorimonti & Greenberg, who was counsel of record for the Apartments in the bankruptcy action, and not by the law firm of Teilborg, Sanders and Parks. Affidavit of John E. Osborne II, para. 8; Affidavit of Suzanne Malone Adams, para. 8, copy attached as Exhibit B.

7. The Stallings' counsel wrote Mr. Greenberg requesting that his client agree to lift the stay to permit the superior court action to proceed "against the insurance proceeds only and not the debtors' assets." Osborne to Greenberg Letter dated May 3, 1991, copy attached as Exhibit C; Affidavit of John E. Osborne II, para. 9.

8. At or about the time that Stallings' firm expected the Order lifting the stay to be entered, an attorney representing Mr. Greenberg's office contacted Mr. Osborne's legal secretary and offered to stipulate to lift the Stay. Affidavit of Suzanne Malone Adams, para. 6, copy attached as Exhibit B.

9. This offer was communicated to Mr. Osborne, who felt that entry of the Order was so imminent that a formal stipulation was then un-necessary. Affidavit of John E. Osborne II, para. 10; Affidavit of Suzanne Malone

Adams, para. 7.

10. The Order was then entered in due course on June 25, 1991, in the form intended by Stallings' counsel, "so that the Stallings may proceed in their personal injury claims against the Debtor, ... and collect any judgment they may secure based on their personal injury claims from the insurance carriers or carriers for the Debtor only ... ." Affidavit of John E. Osborne II, para. 11; Order Re Stallings' Motion for Relief From Automatic Stay, copy attached to the Stallings' Opposition to Motion to Dismiss as Exhibit E.

11. Mr. Osborne promptly notified Mr. Greenberg that the Order was entered so that the lawsuit would continue, and granted time as a professional courtesy to answer to the Defendant to August 2, 1991. Osborne to Greenberg Letter dated July, 9, 1991, copy attached as Exhibit D.

12. Stallings' counsel through his assistant further on August 1, 1991 granted extensions of time as a professional courtesy to the Defendant to Answer. Adams Letter to Aetna Insurance dated August 1, 1991, copy attached as Exhibit E; Kent Letter to Osborne dated August 5, 1991, copy attached as Exhibit G; Sobel Letter to Osborne dated August 5, 1991, copy attached as Exhibit F.

13. At all times, Stallings' counsel relied that the Bankruptcy Order granted the Stallings to continue their claims against the Defendant as if the stay had never been in effect, except as modified with respect to collection from the Defendant's assets as opposed to the Defendant's insurance coverage. Affidavit of John E. Osborne II, para. 14.

14. The actions of Stallings' counsel here are consistent with his understanding of the standard of practice in this state under these circumstances. Affidavit of John E. Osborne II, para. 15.

DATED this 5th day of December, 1991.

GOLDBERG & OSBORNE

By /s/ John E. Osborne
John E. Osborne
Attorneys for the Plaintiffs

COPY mailed this 5th
day of December, 1991, to:

The Hon. Alfred J. Rogers
Maricopa County Superior Court
201 West Jefferson
Phoenix, AZ 85003

Richard A. Kent, Esq.
TEILBORG, SANDERS & PARKS, P.C.
3030 North Third Street, #1300
Phoenix, Arizona 85012
Counsel for Spring Meadows

/s/

AFFIDAVIT OF JOHN E. OSBORNE II

COUNTY OF PIMA)
)
STATE OF ARIZONA)

John E. Osborne, being first duly sworn, hereby deposes and states:

1. I am competent to make this affidavit, and have personal knowledge of its contents.

2. I am counsel of records for David and Barbara Stallings in their claims against the Spring Meadows Apartments, Civil Cause No. CV 91-00953.

3. The bankruptcy court entered an Order that was entirely authored by me based on an associated Motion authored by the me.

4. I prepared both the Motion and Order with the intent that the Order would permit the Stallings to proceed with this superior court litigation as if the stay had not been in effect.

5. The Stallings' Motion to Lift Stay fully apprised the bankruptcy court of the fact that the claims on which the Stallings' counsel wished to proceed were contained in the state court suit "filed on February 12, 1991, and served [on] the Debtor on February 26, 1991."

6. The intent of the Motion as designed by me and as expressed in the Motion was to permit the Stallings to collect any judgment from "a liability policy of insurance covering

this loss with Aetna Insurance Company, under policy number 67AZ20085038FWI."

7. Justification and good cause existed to lift the stay in toto because "the stay as proposed should benefit the Debtor in that it will reduce the debts of the Debtor through a source unavailable generally to the remaining creditors of the Debtor."

8. The Spring Meadows Apartments at the time was represented by the law firm of Fiorimonti & Greenberg, who was counsel of record for the Apartments in the bankruptcy action, and not the law firm by Teilborg, Sanders and Parks.

9. I wrote Mr. Greenberg requesting that his client agree to lift the stay to permit the superior court action to proceed "against the insurance proceeds only and not the debtors' assets."

10. The offer of the Spring Meadows Apartments to lift the stay was communicated to Mr. Osborne, who felt that entry of the Order was so imminent that a formal stipulation was then unnecessary.

11. The Order was then entered in due course on June 25, 1991, in the form intended me, "so that the Stallings may proceed in their personal injury claims against the Debtor, . . . and collect any judgment they may secure based on their personal injury claims from the insurance carrier or carriers for the Debtor only . . . ."

12. I promptly notified Mr. Greenberg that the Order was entered so that the lawsuit would continue, and granted time as a professional courtesy to answer to the Defendant to August 2, 1991.

13. I further through my assistant on August 1, 1991 granted extensions of time as a professional courtesy to the Defendant to Answer.

14. At all times, I relied that the Bankruptcy Order granted the Stallings the right and authority to continue their claims against the Defendant as if the stay had never been in effect, except as modified with respect to collection from the Defendant's assets as opposed to the Defendant's insurance coverage.

15. My actions here are consistent with my understanding of the standard of practice in this state under these circumstances.

FURTHER AFFIANT SAYETH NAUGHT.

/s/ John. E. Osborne
John E. Osborne

SUBSCRIBED AND SWORN TO BEFORE ME this 5th day of December, 1991 by John E. Osborne.

/s/ [Notary Public]
Notary Public

My commission expires:
11/20/92

AFFIDAVIT

STATE OF ARIZONA)
) ss.
COUNTY OF PIMA)

Suzanne Malone Adams, being first duly sworn upon her oath, deposes and states:

1. I am competent to make this affidavit.

2. I was legal secretary for John E. Osborne during the period that we prepared a Motion to Lift Stay in the United States Bankruptcy Court in the bankruptcy of the Spring Meadows Apartments.

3. Before we made this Motion, we wrote the attorneys for the Spring Meadows Apartments, the Law Offices of Jeffrey Greenberg, to request that they stipulate to lift the stay.

4. While I called a number of times to follow up on our request for a stipulation, Mr. Greenberg's office did not respond.

5. We then filed our Motion to Lift Stay, copying Mr. Greenberg's office with the Motion.

6. At or about the time that we expected the Order granting the Motion to be entered, an attorney from Mr. Greenberg's office contacted me and stated that he would stipulate to lift the Stay.

7. I communicated this offer to Mr. Osborne, who stated that since the Order was to be entered so soon without opposition, there was no need to secure a stipulation at that late date.

8. At all times, with respect to our dealings with the Spring Meadows Apartments, Mr. Greenberg's office, and not Teilborg, Sanders, and Parks, was counsel involved in the matter.

FURTHER AFFIANT SAYETH NOT.

/s/ Suzanne Malone Adams
SUZANNE MALONE ADAMS

SUBSCRIBED AND SWORN to before me this 3rd day of December, 1991, by Suzanne Malone Adams.

/s/ Pamela Brown
NOTARY PUBLIC

May Commission Expires:
1/23/93

[GOLDBERG & OSBORNE LETTERHEAD]

May 3, 1991

Jeffrey H. Greenberg, Esq.
Fioramonti & Greenberg
260 East River Road, Suite 250
Tucson, Arizona 85704

Re:	Your Client:	Spring Meadows Apartment Complex
	My Clients:	David L. and Barbara J. Stallings
	Bankruptcy No.:	91-0025-TUC-LO - Chapter 11
	Date BK Filed:	January 4, 1991

Dear Mr. Greenberg:

This office represents the Stallings family in connection with a personal injury which occurred on May 13, 1989, on the premises of Spring Meadows Apartments.

We are aware that coverage currently exists with Aetna Insurance Company and request that you enter into a Stipulation to Lift Automatic Stay allowing us to proceed against the insurance proceeds. Language in the Stipulation, upon agreement, will specifically state insurance proceeds only and not the debtors' assets.

Please contact my office upon receipt of this letter so that we can avoid the necessity of preparing a Motion to Lift Stay and save time for everybody involved.

Thank you for your consideration and prompt attention to this request.

Very truly yours,

GOLDBERG & OSBORNE

/s/ John E. Osborne
John E. Osborne

JEO/sma

[GOLDBERG & OSBORNE LETTERHEAD]

July 9, 1991

Jeffrey H. Greenberg, Esq.
Fioramonti & Greenberg
260 East River Road, Suite 250
Tucson, Arizona 85704

Re:	Your Client:	Spring Meadows Apartment Complex
	My Clients:	David L. and Barbara J. Stallings
	Bankruptcy No.:	91-0025-TUC-LO - Chapter 11
	Maricopa Cause No.:	CV-91-00953

Dear Mr. Greenberg:

Enclosed is a copy of the Order to Lift Automatic Stay signed by Judge Ollason on June 25, 1991, regarding the Motion filed by Mr. and Mrs. David Stallings.

Formal request is now made that Spring Meadows file an Answer to the Complaint served on February 26, 1991. I will expect receipt of the same on or by August 2, 1991.

Thank you for your prompt attention to this matter.

Very truly yours,

GOLDBERG & OSBORNE

/s/ John E. Osborne
John E. Osborne

JEO/sma
enc

[GOLDBERG & OSBORNE LETTERHEAD]

VIA FACSIMILE
FAX NO.: 395-8655

August 1, 1991

Mr. Paul Ballentine
Aetna Insurance Company
Post Office Box 52036
Phoenix, Arizona 85072

Re:	Our Clients:	David and Barbara Stallings
	Your Insured:	Spring Meadows Apartment Complex
	Date of Loss:	May 13, 1989
	Claim No.:	97619

Dear Mr. Ballentine:

Enclosed is a copy of the Summons and Complaint filed against your insured, Spring Meadows Apartments, in February of 1991. Also enclosed is the Order to Lift Automatic Stay signed on June 25, 1991. A copy of this Order was forwarded to Jeffrey Greenberg here in Tucson on July 9, 1991, requesting that he make arrangements with his company to file an Answer on or by August 2, 1991.

Mr. Osborne is out of the office until tomorrow, however, I have authorized a ten day extension in which to file an Answer. Please be advised that this matter has been ongoing since February of this year and we will, therefore, grant no further extensions.

We will expect to receive an answer no later than August 12, 1991, or will be forced to file an application for default.

If you have any questions or if I may be of any further assistance, please do not hesitate to call.

Very truly yours,

GOLDBERG & OSBORNE

/s/ Suzanne M. Adams
by Suzanne M. Adams
Legal Assistant to John E. Osborne

/sma
encs

[FIORAMONTI & GREENBERG, P.A. LETTERHEAD]

August 5, 1991

John Osborne, Esq.
GOLDBERG & OSBORNE
1830 East Broadway, Suite 136
Tucson, Arizona 85719

Re: Stallings vs. Spring Meadows Apartment Complex
Case No. 91-0025-TUC-LO

Dear John:

I write to confirm that your office has agreed to a 10-day extension from the August 2nd date to file an Answer in Stallings vs. Spring Meadows. This extension was granted by Suzanne on July 31, 1991. Thank you.

Very truly yours,

FIORAMONTI & GREENBERG, P.A.

/s/ R. David Sobel
R. David Sobel

RDS/jmr

[TEILBORG, SANDERS & PARKS LETTERHEAD]

August 5, 1991

John Edwards Osborne
Goldberg & Osborne
1830 E. Broadway, Suite 136
Tucson, Arizona 85719

Re: Stallings v. Spring Meadows Apartments

Dear Mr. Osborne:

I am writing to confirm my conversation of August 1, 1991 with your paralegal, Suzanne. At that time, she graciously extended us a ten day extension within which to file a responsive pleading on behalf of the Spring Meadows apartment complex. Thank you for your professional cooperation and courtesy.

Very truly yours,

/s/ Richard A. Kent
Richard A. Kent
For the Firm

RAK:df